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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 MATTHEW MUNGER, a single man, by and
9 through his attorney-in-fact, STEVEN
10 MUNGER;

11 Plaintiff,

12 v.
13 SOCIAL SECURITY ADMINISTRATION;
14 6401 Security Boulevard
15 Baltimore, Maryland 21235
16 Defendants.

CIVIL ACTION NO.

COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF AND AWARD OF
STATUTORY FEES AND COSTS

16 I. INTRODUCTION

17 1.1 This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. §
18 552, as amended, as well as agency FOIA regulations, challenging the failure of the Social
19 Security Administration (“SSA”) to fulfill Plaintiff’s request for documents relating to Plaintiff’s
20 injury at their Longview, Washington office on May 18, 2017.

21 1.2 This case seeks declaratory relief that Defendants is in violation of the FOIA for
22 failing to fulfill Plaintiff’s request for records/video/photographs, and injunctive relief that
23 Defendant immediately and fully comply with Plaintiff’s request under the FOIA.

II. JURISDICTION AND VENUE

2.1 This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

III. PARTIES

3.1 Plaintiff Matthew Munger is a disabled single man who currently resides in Seattle, King County, Washington. At the time of the May 18, 2017, injury, he resided with his father in Longview, Cowlitz County, Washington. Mr. Munger suffered a debilitating, severe and permanent injury after falling on a rug while at the Social Security Office in Longview, Washington, on May 18, 2017. Subsequently, through his legal counsel, Mr. Munger made a FOIA request to Defendants for documents/video/film regarding his injury and the mat/rug involved in Mr. Munger's fall. To date, Defendants have failed to produce a single record/document/photograph in response to Plaintiff's FOIA request dated May 25, 2017, and August 24, 2018 (resubmit).

3.2 Plaintiff is harmed by SSA's failure to comply with the FOIA because the failure harms Plaintiff's ability to investigate and pursue a possible personal injury action which caused him to suffer severe, debilitating, and permanent injuries. Plaintiff has exhausted all applicable administrative remedies with regard to Defendant. 5 U.S.C. § 552(a)(6)(C).

3.3 Defendant Social Security Administration is an agency within the meaning of 5 U.S.C. § 552(f). The SSA is the federal agency with possession and control of the requested records/documents/video, and is responsible for fulfilling Plaintiff's FOIA request.

1 **IV. STATUTORY FRAMEWORK – The Freedom of Information Act**

2 4.1 The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release
3 requested records to the public unless one or more specific statutory exemptions apply.

4 4.2 An agency must respond to a party making a FOIA request within twenty working
5 days, notifying that party of at least its determination whether or not to fulfill the request, and of
6 the requester's right to appeal its determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

7 4.3 An agency must respond to a FOIA appeal within twenty working days, notifying
8 that party of its determination to either release the withheld records or uphold the denial. 5
9 U.S.C. § 522(a)(6)(A)(ii).

10 4.4 In “unusual circumstances” an agency may delay its response to a FOIA request
11 or appeal, but must provide notice and provide “the date on which a determination is expected to
12 be dispatched.” 5 U.S.C. § 552(a)(6)(B)

13 4.5 This Court has jurisdiction, upon receipt of a complaint, “to enjoin the agency
14 from withholding agency records and to order the production of any agency records improperly
15 withheld from the complainant.” 5 U.S.C. § 522(a)(4)(B)

16 4.6 The FOIA provides a mechanism for disciplinary action against agency officials
17 who have acted inappropriately in withholding records. Specifically, when requiring the release
18 of improperly withheld records, if the Court makes a written finding that “the circumstances
19 surround the withholding raise questions whether agency personnel acted arbitrarily or
20 capriciously”, a disciplinary investigation is triggered. 5 U.S.C. § 522(a)(4)(F).

21 **V. FACTS GIVING RISE TO PLAINTIFF'S CLAIM FOR RELIEF**

22 5.1 On May 18, 2017, Plaintiff was visiting the Longview, Washington Social
23 Security Office with his father, Michael Munger. Plaintiff Matthew Munger was 55 years of age

1 (at the time of his injury) and is developmentally disabled. As Plaintiff entered the office, a mat
2 in the entryway was askew, causing him to fall head first into a nearby wall. The impact of Mr.
3 Munger's head left a large indent in the drywall. Mr. Munger was transported to a local hospital
4 and ultimately diagnosed with multiple cervical fractures and left paralyzed.

5 5.2 On May 25, 2017, Mr. Munger (through legal counsel) send the Social Security
6 Office in Longview, a Preservation Demand requesting they preserve all evidence surrounding
7 Mr. Munger's injury.

8 5.3 On June 2, 2017, pursuant to the Freedom of Information Act (FOIA), Plaintiff
9 requested SSA produce the following:

- 11 1. Any documents or electronic media related in whole or in part to the
12 slip/trip and fall incident involving Matthew Munger and occurring on
13 May 18, 2017.
- 14 2. Any and all electronic media capturing events and occurrences in or near
15 the entry way, foyer, customer area of the Longview Social Security
16 Office on May 18, 2017.
- 17 3. Any and all documents or electronic media regarding, related to, or
18 including policies, directions, and rules relating to upkeep, maintenance,
19 hazard prevention, and safety.
- 20 4. Any and all documents or information identifying any witness to the
21 occurrences involving Matthew Munger and occurring on May 18, 2017.

22 5.4 No response, or acknowledgement of the FOIA request was ever received by SSA
23 until September 8, 2017. On this date, Plaintiff's counsel was contacted by a SSA representative
24 (Michael Sarich) by email advising he intended to close the FOIA request by September 30,
25 2017.

1 5.5 During a subsequent telephone call between Plaintiff's counsel and Mr. Sarich on
 2 September 11, 2017, Mr. Sarich indicated he would start "gathering documents" responsive to
 3 Plaintiff's FOIA request.

4 5.6 Four days later on September 15, 2017, Mr. Sarich first requests a signed
 5 Consent/Authorization Form signed by Plaintiff. Mr. Sarich did not specify which records
 6 required this signed Consent/Authorization Form. By this date, *more than three months* since the
 7 FOIA request, Plaintiff had *yet* to receive a letter from SSA regarding its determination to either
 8 release or withhold records, or cite to any requirement/exemption regarding the
 9 release/withholding of any documents.

10 5.7 Over the next week, Plaintiff's counsel and SSA/Sarich exchanged multiple
 11 emails/letters to clarify which records were withheld/required the Consent/Authorization Form,
 12 and requesting a list of documents SSA claimed were exempt due to the consent requirement
 13 claim. On October 3, 2017, Plaintiff's received a letter from SSA "administratively closing" the
 14 FOIA request made by Plaintiff. A second letter from SSA was received on October 5, 2017,
 15 defending its decision to "administratively close" Plaintiff's FOIA request. This letter further
 16 states that Plaintiff was seeking "information from Mr. Munger's Social Security records,"
 17 despite the fact this information was never requested.

18 5.8 On October 9, 2017, Plaintiff provided the signed Consent/Authorization to SSA
 19 signed by Plaintiff's brother, Steven Munger, as Plaintiff is unable to sign.

20 5.9 On October 11, 2017, Plaintiff appealed the "administrative closing" of his FOIA
 21 request. No response was received by SSA after the submission of the Appeal until almost seven
 22 (7) months later when a letter from SSA was received re-affirming the decision not to release
 23 "certain" records. In fact, SSA had not released *any* records in response to Plaintiff's FOIA.
 24

1 5.10 On August 24, 2018, Plaintiff re-submitted his original FOIA request along with
2 the signed Consent/Authorization signed by Plaintiff's brother/Attorney-in-Fact, Steven Munger.

3 5.11 On August 29, 2018, an email was received from SSA stating the FOIA had been
4 received on August 29, 2018. No other response has received to date.

5 5.12 Under FOIA, SSA was required to make a determination with respect to
6 Plaintiff's FOIA request within twenty (20) days (excluding Saturdays, Sundays and legal
7 holidays) after receipt of the request. According to Plaintiff's calculations, the twentieth day fell
8 on September 24, 2018.

9 5.13 The statutory time limit for SSA to respond to Plaintiff's request has run out and
10 Plaintiff has constructively exhausted the applicable administrative remedies. 5 U.S.C. §
11 552(a)(6)(C); see also *Judicial Watch v Rossotti*, 326 F.3d 1309, 1310, 356 U.S.App.D.C. 54, 55
12 (D.C. Cir. 2003); *Oglesby v. U.S. Department of the Army*, 920 F.2d 57, 62, 287, U.S.App.D.C.
13 126, 131 (D.C. Cir. 1990).

15 **VI. PLAINTIFF'S CLAIM FOR RELIEF**

16 **First Claim of Action: Failure to Produce Records**

17 6.1 Plaintiff realleges and incorporates by reference all preceding paragraphs.

18 6.2 Plaintiff properly asked for records within SSA's control.

19 6.3 Plaintiff is entitled to law to access to the records requested under the FOIA,
20 unless Defendant makes an explicit and justified statutory exemption claim.

21 6.4 Therefore, Defendant violated FIOA's mandate to release agency records to the
22 public by failing to release the records as Plaintiff specifically requested. 5 U.S.C. §
23 552(a)(3)(A), 552(a)(4)(B).

1 **Second Claim of Action: Failure to Respond**

2 6.5 Plaintiff realleges and incorporates by reference all preceding paragraphs.

3 6.6 On June 2, 2017, and again on August 24, 2018, Plaintiff filed a FOIA request
4 with the SSA.

5 6.7 To date, Plaintiff has not received a response from SSA and SSA has exceeded
6 the 20-working day statutory time limit for such a response. 5 U.S.C. § 552(a)(6)(A)(i).

7 6.8 Therefore, SSA has violated the FOIA's mandate to response to Plaintiff's FOIA
8 request within the statutory period.

9 **VI. PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff respectfully requests that this Court:

11 7.1 Declare that SSA has violated the Freedom of Information Act (FOIA) by failing
12 to lawfully satisfy Plaintiff's FOIA requests dated June 2, 2017, and August 24, 2018;

13 7.2 Order SSA to respond to Plaintiff's FOIA request;

14 7.3 Order SSA to immediately release all records responsive to Plaintiff's FOIA
15 request;

16 7.4 Declare that SSA has violated the Freedom of Information Act (FOIA) by failing
17 to lawfully satisfy Plaintiff's FOIA requests of June 2, 2017, and August 24, 2018;

18 7.5 Award Plaintiff its reasonable attorney's fees and litigation costs in this action,
19 pursuant to 5 U.S.C. § 552(a)(4)(E); and

20 7.6 Grant such other and further relief as the Court may deem just and proper.

1 DATED this 4th day of January, 2019.

2 RUSSELL & HILL, PLLC
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